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REMARKS

In a final office action on the parent case, the examiner continued the 35 U.S.C. §102(b) anticipation rejection over the Andreozzi patent, as well as the 35 U.S.C. §103(a) obviousness rejection over Andreozzi in view of Lynd et al.

Both of these rejections apply to all of the claims. Yet, the examiner's explanation of the anticipation rejection over Andreozzi only recites how the Andreozzi patent discloses the limitations of claim 12. Applicant respectfully points out to the Examiner that claims 1, 6 and 11, even in the condition in which they existed at filing, contained other recitations not mentioned in this portion of either the first or final office actions. In particular, all of these claims require that the second end extend "upwardly from the container so that liquid may be sipped through from the container," wherein at least a part of the straw is held by or has its configuration defined by the configuration of the retaining member.

Yet, the examiner neglects to mention how either of these limitations are addressed by the Andreozzi reference. This omission is critical because, as explained in Applicant's prior response in the parent case, the straw structure disclosed by Andreozzi, even when given its broadest reading, cannot at the same time meet the limitation that at least part of the configuration of the straw is defined by the configuration of the retaining member (the clip 40) and yet leave the upper end of the straw available to be sipped from, as required by claims 1, 6 and 11. Accordingly, this reference cannot possibly anticipate any of these claims, or any claims dependent on claims 1 and 6.

Applicant has added additional language to further refine this distinction. All of the claims have been preliminarily amended to add the language that the liquid may be sipped through from the container "while the straw is disposed in the at least one retaining member." This is manifestly untrue of the Andreozzi structure. When the first end of the straw (a

combination of flexible straw 34 and tube 20) is retained in the clip 40 (in which case, it could be said to meet the limitation that the configuration of the straw is defined by the configuration of the retaining member), it clearly does not extend upwardly from the container so that liquid may be sipped through from the container.

In fact, in order to sip liquid through Andreozzi's straw, it is removed from the retaining clip. There is no particular disclosure in Andreozzi that, even when the straw is removed from the clip, its first end extends upwardly. In fact, Figure 1 seems to indicate that it extends downwardly. However, even if the straw could be reconfigured when it is out of the clip so that its upper end extends upwardly, then its configuration is no longer defined by the configuration of the retaining member, i.e., the clip, since it is no longer retained in the clip.

Accordingly, Andreozzi's disclosure does not anticipate any of claims 1, 6 or 11 as amended. Furthermore, there is no disclosure in Andreozzi which would suggest to one of skill in the art to modify the structure so that the upper end of the straw would extend upwardly from the container while the straw is still retained by the clip. Thus, amended claims 1-11 are neither anticipated by nor obvious over this reference, and Applicant respectfully requests the examiner to withdraw it.

Applicant also respectfully points out to the examiner that dependent claims 2-5 and 7-10 contain additional structural recitations. Yet, neither the first nor final office actions contain any guidance on what structures in the Andreozzi reference teach these additional limitations. Accordingly, Applicant respectfully requests the examiner to clarify the anticipation rejection of claims 2-5 and 7-10.

Additionally, with regard to claim 11, the office action, itself, acknowledges that "Andreozzi discloses the invention except for the first end of the straw extending into the

container to terminate proximate a closed bottom of the container and a straw which has a loop which extends through an aperture in the lid to form a hinge for the lid.” Yet, claim 11 contains both these precise limitations. How can it be that Andreozzi can be said to anticipate this particular claim? Again, Applicant respectfully requests the examiner to clarify the §102(b) rejection over Andreozzi of claim 11.

With regard to the obviousness rejection over the combination of Andreozzi and Lynd et al., it appears that the examiner cites the Lynd reference solely to supply the missing teaching from Andreozzi (concerning the loop forming the hinge and the first end of the straw terminating proximate the bottom of the container). Again, Applicant is at a loss as to why this rejection is applied to claims 1, 2, 6 and 7 because none of these claims contain recitations which are relevant to the teachings that the examiner finds in the Lynd et al. reference.

Of course, since Lynd is cited only for particular teachings, combining this reference with Andreozzi cannot achieve Applicant’s invention as recited in claims 1-11 for the reasons set forth earlier in this response in the discussion of the Andreozzi anticipation rejection. Since there are important recitations from these claims simply missing from the Andreozzi reference, combining this reference with Lynd cannot achieve Applicant’s invention. Accordingly, claims 1-11 are not rendered obvious by combining one defective reference with another one, and Applicant respectfully requests the examiner to withdraw the obviousness rejection as well.

With regard to claim 12, this claim, unlike any of the other ones, does not require either the straw retaining member, the configuration of the straw being defined by the straw retaining member, or the sipping end of the straw which extends upwardly from the container while the straw is retained in the retaining member.

Applicant has explained in the prior response that “Andreozzi discloses no structural member which functions as a hinge and no mention in the disclosure of the lid being hinged to the container.” The examiner has responded to this with the statement “This disclosure is insofar as applicant has disclosed similar hinge structure as represented by applicant’s claim language. There is no requirement for Andreozzi to recite a ‘hinge’ per se.”

However, there is a requirement that Andreozzi disclose a structure which meets the limitation of claim 12. This claim contains the recitation “wherein said straw functions as a hinge for said lid, retaining said lid when said lid is removed from said cup.” If we look at the Andreozzi reference, we find that the upper end of the integral drinking tube 20 extends through an aperture in the lid 24 and terminates a very short distance above the lid. If the flexible straw is not attached to the tube, clearly the tube could not possibly retain the lid to the cup, thus not meeting the limitation of claim 12. If the flexible straw is attached to the tube, then the lid cannot be removed from the cup because, as is clearly shown in the sectional view of Figure 2, the end of straw 34 is mounted onto the upper end 23 of the tube 20 such that it encompasses the entire end 23. In other words, the end of straw 34 has a diameter which is larger than the diameter of the tube 20 so that it may be fit over the end of the tube. As depicted in Figure 2, the diameter of the aperture is the same as the diameter of the tube, as we would expect when we read the portion of the disclosure (column 2, lines 52-56) which explains that the lid prevents spilling of the contents of the container “when the vessel is in a position of use and particularly during movement of the vehicle in which the vessel is mounted.” Obviously, if, contrary to what is depicted in Figure 2, the aperture were larger than the tube, liquid could leak from it.

Accordingly, we have a lid with an aperture having a diameter which is smaller than the diameter of the flexible drinking straw. Accordingly, when the flexible straw is mounted

on the drinking tube, the lid cannot be removed from the container and cannot serve as a hinge for the lid, as required by claim 12.

So the point is not that Andreozzi fails to disclose a “hinge per se,” as the examiner appears to believe Applicant is arguing, but rather that Andreozzi does not disclose any structure which meets the limitations of claim 12.

Since, as previously pointed out, the Lynd et al. reference also does not disclose any structure which meets this limitation of claim 12, combining these two references cannot possibly render claim 12 obvious. Accordingly, since the references of record neither anticipate nor render obvious claim 12, it is patentable.

Applicant has one final comment concerning the last paragraph of page 3 of the final office action which states:


Later, in the paragraph bridging pages 5 and 6 of applicant's remarks, applicant acknowledges that the straw 34 is retained by the clip (40), and perhaps one could argue that this meets the limitation. This seems to contradict applicant's other remarks made on page 2.

Applicant is puzzled by this remark because, of course, there are no remarks on page 2 of Applicant's prior response, but only claim amendments. While Applicant is unable to determine exactly which of Applicant's remarks the examiner believes this acknowledgement contradicts, Applicant respectfully points out to the examiner that acknowledging that the Andreozzi reference can possibly be construed to disclose one structural limitation found in the majority of the claims in no way constitutes any acknowledgement that Andreozzi discloses all of the structural limitations of these claims. That Applicant continues to vigorously contest, as explained in great detail above. Of course, the examiner is aware that a §102 anticipatory rejection must clearly disclose ALL of the recitations of the claims which it is said to anticipate.

Should the examiner have any questions or comments, Applicant's representative may be reached by telephone at the office number below.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "Version with Markings to Show Changes Made."

Respectfully submitted,



Judith M. Riley, Reg. 51,351
Attorney for Applicant
Gifford, Krass, Groh, Sprinkle,
Anderson & Citkowski, P.C.
280 N. Old Woodward, Suite 400
Birmingham, MI 48009
(248)647-6000

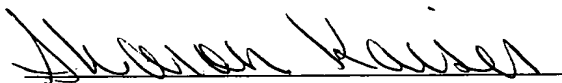
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Sharon Kaiser

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claim 1 has been amended as follows:

1. (Twice Amended) A combination drinking container and straw comprising:
a container having a wall enclosing a chamber, a bottom, an open top, and at least one straw retaining member formed in said wall; and
a straw disposed in the at least one retaining member, the straw having a first end which is in fluid communication with the chamber of the container and a second end which extends upwardly from the container so that liquid may be sipped through from the container while the straw is disposed in the at least one retaining member, wherein at least part of the configuration of the straw is defined by the configuration of the retaining member.

Claim 6 has been amended as follows:

6. (Amended) A combination drinking container and straw comprising:
a container having a wall, a bottom, an open top, and at least one straw retaining member formed in the wall; and
a straw disposed in the at least one retaining member, the straw having a first end which extends into the container and a second end which extends upwardly from the container so that liquid may be sipped through from the container while the straw is disposed in the at least one retaining member, wherein at least a part of the straw is held in position with respect to the container by the retaining member.

Claim 11 has been amended as follows:

11. (Twice Amended) A combination drinking container and straw comprising:

a container having an outer wall, a bottom, an open top, and at least one straw retaining member disposed in an outer surface of the outer wall;

a lid for closing the top of the container, the lid having an aperture formed therethrough;

a straw [deposed] disposed in the at least one retaining member, the straw having a first end which extends into the container to terminate proximate the closed bottom thereof and a second end which extends upwardly from the container so that liquid may be sipped through from the container while the straw is disposed in the at least one retaining member, wherein the configuration of the straw is defined by the configuration of the retaining member; and

a loop formed by the straw proximate the container top such that, when said straw extends through said aperture, said loop hinges said lid onto said combination even when said lid is removed from said container.